

EXC 2006/6 - Explanatory statement -



Explanatory Statement

Excise Act 1901

Excise concessional spirit approvals guidelines 2006 (No. 1)

General outline

1. This Explanatory Statement is provided in accordance with section 26 of the *Legislative Instruments Act 2003*.
2. *Excise concessional spirit approvals guidelines 2006 (No. 1)* is required due to amendments to the Excise legislation effected by *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006*, *Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006* and Excise Amendment Regulations 2006 (No. 3).

The amendments are the result of the Review of the Schedule to the *Excise Tariff Act 1921* (the Review) initiated by Treasury on 2 June 2005 with the release of an industry discussion paper and a targeted consultation process. The principal objects of the Review were to streamline the Schedule to the *Excise Tariff Act 1921* (the Excise tariff) and make it more user-friendly, make excise law clearer and less complex, and improve the integrity of the excise system.
3. Up to 30 June 2006 approvals for the duty-free use of denatured spirit and undenatured spirit were granted under the Spirits Regulations 1926 and the Excise Regulations 1925, respectively. Under the Review, relevant primary legislation and regulations are repealed with effect from 1 July 2006. New provisions in the *Excise Act 1901* (Excise Act) simplify and bring up to date the legislative framework that applies to approvals to use concessional spirit (also called 'permits').
4. Under section 77FF of the Excise Act the CEO (i.e. the Commissioner of Taxation) may grant an approval to a person to use duty-free spirit for a specific industrial, manufacturing, scientific, medical, veterinary or educational purpose. Spirit delivered under an approval is classified to subitem 3.7 of the Excise tariff and requires the recipient to hold the approval. Paragraphs 1.37 and 2.57 to 2.61 of the Explanatory Memorandum to the amending Bills provide commentary on the intended operation of section 77FF.
5. New subsection 77FF(5) requires the CEO to develop guidelines to which regard must be had in granting an approval. The purpose of the guidelines is to provide greater degree of transparency to the approval process in keeping with the objects of the Excise legislation.
6. Through the making of this legislative instrument, the public will have access to a statement of the principles under which approvals are granted.
7. The instrument is made by the CEO under subsection 77FF of the Excise Act.

Date of effect

8. The instrument commences on 1 July 2006.

Purpose and effect of the instrument

9. The determination provides guidelines to which the CEO must have regard when considering an application for the use of duty-free spirit by a person for a specific industrial, manufacturing, scientific, medical, veterinary or educational purpose, as required by subsection 77FF(5) of the Excise Act.

10. The overarching principle of the guidelines is the protection of the revenue.

Example: If spirit attracts duty at the rate of \$62.64 per litre of alcohol, the diversion of a 200 litre drum of spirit at 95% strength represents a loss to the revenue of about \$11,900.

11. While the more serious risk is in relation to diversion to beverage use, the increasing use of fuel ethanol and the price of fuel pose an additional risk that bulk concessional spirit might be diverted into fuel without the payment of duty at the appropriate rate.

The guidelines

13. The CEO may approve the use of specified quantities of duty-free spirit under section 77FF only for specific purposes. Those purposes are:

- industrial (e.g. as a refrigerant, a solvent, a cleaning agent);
- manufacturing (e.g. in essences, cakes, confectionary);
- scientific (e.g. as a reagent, a solvent, a preservative);
- medical (e.g. as a solvent, a sterilising agent, a cleaning agent);
- veterinary (e.g. as a solvent, a sterilising agent, a cleaning agent); or
- educational (e.g. laboratory use).

14. The guidelines clarify that the use of spirit for these purposes would ordinarily be in the course or furtherance of carrying an enterprise (paragraph 9).

15. Certain uses of spirit are excluded (paragraph 10):

Use in a beverage or in the production of a beverage, other than as an incidental input (paragraph 10.1)

An example of an incidental input is a spirit-based flavouring or essence used for flavouring that does not measurably increase the alcohol content of the product. A spirit-based essence used as a base for an alcoholic beverage is not an incidental input.

Use for an intoxicating purpose in products that are not beverages (paragraph 10.2)

Non-beverage products such as alcoholic jellies or iceblocks are excluded. Non-beverage products such as medicines and mouthwashes are not affected by this exclusion, as these products are not a source of alcohol consumption as such.

Use as a fuel or a component in fuel (paragraph 10.3)

When used as a fuel or a component in fuel, alcohol (ethanol) is classified to an appropriate subitem of item 10 of the Excise tariff. This applies whether or not it is used in an internal combustion engine or as a burner fuel.

On-supply of spirit to another person, except as expressly allowed by the approval (paragraph 10.4)

On-supply does not fall within the intended scope of 'use' in subsection 77FF(1). However, where the on-supply is made by a user of the spirit and is merely a step towards the use of the spirit for an approvable purpose by a subsidiary or affiliated entity, the CEO may expressly allow it in the interests of good administration.

Example: an approval for a hospital states that the hospital may on-supply spirit to a specified entity that uses spirit in the course of medical research within the hospital.

16. The CEO must be satisfied of certain matters before granting an approval (paragraph 11):

Intended purpose (paragraph 11.1)

The CEO will be satisfied that the stated purpose is the intended purpose unless there are reasons for doubt. An example of a reason for doubt may be Tax Office intelligence information that the person plans to use the spirit for another purpose.

Improper use is unlikely having regard to certain matters (paragraph 11.2)

The matters that the CEO may take into account in assessing the likelihood of improper use are:

- The quantity of spirit specified in the approval

Under subsection 77FF(2), an approval must specify a quantity of spirit, either as a one-off quantity or as a quantity that can be used in a calendar month or calendar year. In determining the specified quantity, the CEO considers the quantity specified on the application form and whether this is reasonable, taking into account the size and nature of the enterprise and the specified period for which the quantity is nominated.
- Any conditions to which the approval may be subjected

Examples of conditions that might be imposed on an approval are:

 - record-keeping requirements;
 - specified security arrangements for the storage of spirit;
 - the addition of another substance to spirit to lessen the risk of diversion to improper use;
 - restrictions on package sizes and marketing methods for spirit-based products;
 - a security (usually in the form of a cash deposit or a bank or financial institution guarantee);
 - a requirement to enter into a written agreement with the Tax Office.

Example: manufacturers of essences, flavours and like products are required to enter into a written agreement (copy available at Appendix 9.6 of the [The alcohol industry – excise technical guidelines](#) on the Tax Office website).
- other matters considered to be relevant to risk to the revenue or ensuring compliance

Other relevant matters may include:

 - information in the application form, such as:
 - the applicant's identification details (including ABN, where applicable)
 - the address at which spirit is to be stored

- details of the authorised supplier
 - the quantity of spirit to be used
 - the intended specified purpose
 - any other information the CEO considers to be relevant;
- ordinary practice in the industry or field of enterprise;
 - special conditions prevailing in the industry or field of enterprise;
 - the capacity of the person to keep adequate records;
 - tax compliance history.

17. Consistent with the Excise licensing provisions, the CEO will not take compliance history into account beyond 4 years (paragraph 12). Tax compliance history is not limited to Excise but includes compliance with any legislation administered by the Tax Office.

Impact of the instrument

18. The instrument provides the approvals process with a greater degree of transparency and accountability. It formalises the considerations currently taken into account by the Tax Office in approving the delivery of concessional spirit under permit.

19. The instrument does not diminish the ability of persons to gain access to duty-free spirit under permit. It is part of a simpler and clearer legal framework governing approvals. Enhancements to the legislative framework include the introduction of a review mechanism for refusals to grant an approval or the imposition of conditions.

20. Accountability for the use of spirit received under an approval covered by the guidelines is strengthened by section 77FH. Under this provision, the Tax Office may recover an amount equivalent to duty where a person cannot account satisfactorily for use of the spirit.

Consultation

14. On 1 June 2006 the Tax Office initiated a 2-week public consultation process on the legislative instruments arising from the Review, with the Assistant Treasurer approving the consultation prior to the related legislation being passed by Parliament.

15. The instruments and explanatory statements were published on the ATO website www.ato.gov.au in the form of drafts for consultation. The instrument, together with this explanatory statement, was included in that process.

16. Selected parties in the alcohol industry were contacted and invited to comment on the content, form and language of the determination and explanatory statement.

Commissioner of Taxation

[30 June 2006]

Previous draft:

1 June 2006

Related Rulings/Determinations:

Excise (Class of persons—educational institutions) Determination 2006 (No. 1)

Excise (Class of persons—government institutions) Determination 2006 (No. 2)
Excise (Class of persons—medical institutions) Determination 2006 (No. 3)
Excise (Class of persons—health care practitioners) Determination 2006 (No. 4)
Excise (Class of persons—veterinary practitioners) Determination 2006 (No. 5)
Excise (Denatured spirits) Determination 2006 (No. 1)

Subject references:

Excise
Excise Tariff
concessional spirit
concessional spirit specific approvals

Legislative references:

Excise Act 1901 section 77FF
Excise Act 1901 subsection 77FF(1)
Excise Act 1901 subsection 77FF(5)
Excise Act 1901 section 77FH
Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006
Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006
Excise Tariff Act 1921, the Schedule, subitem 3.7
Excise Tariff Act 1921, the Schedule, item 10
Excise Amendment Regulations 2006 (No. 3)
Excise Regulations 1925
Spirits Regulations 1926

Other references:

Review of the Schedule to the Excise Tariff Act: industry discussion paper, Treasury, 2 June 2005
Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006, Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006
The alcohol industry – excise technical guidelines,
http://ato.gov.au/content/downloads/N14790_04_2006_w.pdf, Australian Taxation Office, April 2006

ATO references

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